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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,758	04/18/2006	Joseph Noblett	5955300021	3003
32294	7590	05/26/2010		
SQUIRE, SANDERS & DEMPSEY LLP.			EXAMINER	
8000 TOWERS CRESCENT DRIVE			NGUYEN, TRINH T	
14TH FLOOR				
VIENNA, VA 22182-6212			ART UNIT	PAPER NUMBER
			3644	
			NOTIFICATION DATE	DELIVERY MODE
			05/26/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPGENERALTYC@SSD.COM  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/565,758	NOBLETT, JOSEPH
	Examiner Trinh T. Nguyen	Art Unit 3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on *RCE dated 4/26/10*.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,5,17 and 19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,5,17,19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/GS-68)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination under 37 CFR 1.114 After Final Rejection***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/26/10 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1,5,17,19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3 defines "the tree gripping means comprise projections" and line 8 also defines "the tree gripping means comprises a plurality of projections", it is unclear if the "projections" defined in line 3 is the same and/or different from the "projections" defined in line 8?

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,5,17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kalman et al. (US 6568127).

For claim 1, Kalman et al. disclose a tree stand comprising a fluid reservoir about a tree retaining member including tree gripping means, wherein the tree gripping means comprise projections;

wherein the fluid reservoir (12) comprises a cylindrical or frustoconical member being closed at one end thereof by a base, wherein the tree retaining member is connected to the base;

wherein the tree retaining member (18) comprises a substantially cylindrical hollow member and the tree gripping means (20) comprising comprises a plurality of projections arranged on the interior surface of the tree retaining member and extending in a radial fashion, inwardly from an interior surface of the tree retaining member; wherein the projections run substantially axially with the tree retaining member and include a sharp or pointed portion arranged in use to at least partially penetrate the trunk of a tree inserted into the tree retaining member; and

wherein the tree retaining member is adapted to retain a tree inserted therein without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand.

For claim 5, Kalman et al. disclose the tree retaining member does not substantially protrude from the fluid reservoir.

For claim 17, Kalman et al. disclose the projections are arranged to maintain a degree of separation between a tree trunk inserted into the tree stand, and portions of the interior surface of the tree retaining member.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kalman et al. (US 6568127).

As described above, Kalman et al. teach all the claimed invention except for the fluid reservoir and tree retaining member are in fluid communication.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the tree stand of Kalman et al. so as to include the fluid reservoir and tree retaining member are in fluid communication, since to do so would allow the water to drain more efficiently.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1,5,17, and 19 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 P.M to 6:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571) 272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Trinh T Nguyen/  
Primary Examiner, Art Unit 3644